

1979 WL 42923 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 12, 1979

*1 Mr. M. C. Hughey
Chief of Police
Drawer 'K'
Union, South Carolina 29379

Dear Chief Hughey:

In your recent letter you asked whether a municipal recorder has the authority to dismiss or nol pros a case without having heard any testimony. Please be advised that in the recent case of [State v. Ridge, 236 S.E. 2d 401 at 402 \(1977\)](#), the Supreme Court stated:

(i)n this State, the entering of a nolle prosequi at any time before the jury is empaneled and sworn is within the discretion of the solicitor; the trial judge may not direct or prevent a nol pros at that time . . . The only exception to this rule is when the judge finds the solicitor has acted corruptly. See also [State v. Charles, 183 S.C. 188, 190 S.E. 466 \(1937\)](#).

In the decision of [In re Brittian, 263 S.C. 363, 210 S.E. 2d 600 at 601 \(1974\)](#), the Court quoted with approval 21 Am.Jur. 2d, Criminal Law, Section 517 (1965), where it is stated.

(a) statute may authorize the court, either on its own motion or on the application of the prosecuting officer, to order an indictment or prosecution dismissed. But in the absence of such a statute, a court has no power . . . to dismiss a criminal prosecution, except at the instance of the prosecutor.

I am unaware of any statutory authority which permits a municipal recorder to nol pros or dismiss a particular case on his own motion. Therefore, with reference to the above, a case triable in the municipal court may only be nol prossed in the discretion of the individual acting as the prosecutor.

As to your remaining question of how long law enforcement records must be kept on file, I am unaware of any provisions which specifically authorize the destruction of law enforcement records after the passage of any certain period of time. The only reference in the Code to such records being destroyed is [Section 17-1-40 of the 1976 Code of Laws](#) which provides that after discharge, dismissal or finding of innocence, criminal records may be destroyed.

Hopefully the above is in full response to your questions.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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